IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH APRIL 2007 / 27TH CHAITHRA 1929

WP(C).No. 31534 of 2006(D)

PETITIONER:

**MEMURI PARISTHITHI SAMRAKSHANA SAMITHY-
REGD NO.K.527/2006, REPRESENTED BY ITS PRESIDENT
SRI.A.M.SHAJU, AGED 39 YEARS, SON OF LATE MATHAI,
AREECHIRA, MEMURY P.O., PIN 686617.**

**BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR**

RESPONDENTS:
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1. **KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS SECRETARY, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.**

2. **THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DIVISIONAL OFFICE, KOTTAYAM.**

3. **MANJOOR GRAMA PANCHAYAT,
REPRESENTED BY ITS PRESIDENT, OFFICE OF THE
MANJOOR GRAMA PANCHAYAT, MANJOOR P.O.,
KOTTAYAM- 686 603.**

4. **M/S.JESUS CRUSHING METAL,
MEMURY P.O., MANJOOR, KOTTAYAM.**

BY ADV. SRI.MATHEW SKARIA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17/04/2007 ALONG WITH WPC.NO.34413 OF 2006,
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE CONSENT TO OPERATE ISSUED BY THE 1ST RESPONDENT DTD. 20/11/1997.

EXT.P2: COPY OF THE APPLICATION SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT, DTD. 02/03/2005.

EXT.P3: COPY OF THE CONSENT TO ESTABLISH ISSUED BY THE 1ST RESPONDENT, DTD. 24/08/2005.

EXT.P4: SITE PLAN, SHOWING THE RESIDENTIAL BUILDINGS AROUND 250 METERS OF THE CRUSHER AND A LIST OF SUCH RESIDENTS IN THE AREA.

EXT.P5: COPY OF THE CIRCULAR NO.PCB/T1/17/80 DTD. 30/04/1998 ISSUED BY THE 1ST RESPONDENT.

EXT.P6: COPY OF THE MEMORANDUM SUBMITTED BY THE RESIDENTS OF THE AREA TO THE 1ST RESPONDENT, DTD. 20TH NOVEMBER,2006.

EXT.P7: COPY OF THE PERFORMA INVOICE ISSUED BY THE SYAJI IRON AND ENGINEERING CO.LTD., DTD. 5/11/2005.

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): COPY OF THE INTERIM ORDER IN C.M.P.NO.27202 OF 1992 IN O.P.NO.15051 OF 1992 DTD. 6/04/1993.

EXT.R4(B); COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DTD.22/04/1988.

EXT.R4(C): COPY OF THE LICENCE GRANTED BY THE MANJOOR PANCHAYAT DTD. 24/05/1989.

EXT.R4(D): COPY OF THE CONSENT RENEWAL ORDER ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DTD. 17/11/2005.

EXT.R4(E): COPY OF THE LICENCE ISSUED BY THE MANJOOR GRAMA PANCHAYAT DTD. 13/09/2005.

EXT.R4(F): COPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MANJOOR DTD. 6/12/2006.

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EXT.R4(G): COPY OF THE INTERIM ORDER IN WP(C) NO.34413 OF 2006 DTD. 21/12/2006.

EXT.R4(H): COPY OF THE LETTER NO.A5/6182/05 ISSUED BY THE DISTRICT INDUSTRIES CENTRE, KOTTAYAM DTD. 17/12/2005.

EXT.R4(I): COPY OF THE ORDER NO.DB5/05-06 DTD. 16/01/2006 ISSUED BY THE ASST.EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION, KURAVILANGADU.

EXT.R4(J): COPY OF THE SANCTION ORDER ISSUED BY THE STATE BANK OF TRAVANCORE, NEENDOOR BRANCH, DTD. 31/05/2006.

2ND RESPONDENT'S ANNEXURE:

ANNEXURE R2(1): COPY OF THE CIRCULAR NO.PCB/T4/17/80 DTD. 26/08/2003.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J

W.P.(C) .31534 OF 2006

&

W.P.(C)No.34413 of 2006

Dated this the 17th day of April, 2007

JUDGMENT

Memuri Paristhithi Samrakshna Samithy, an organisation of persons, who are residents of Memurikara comprising Ward No.14 of the Manjoor Grama Panchayat is the petitioner in W.P.(C) No.31534/06 and the respondents in that writ petition are: Kerala State Pollution Control Board (R1); The Environmental Engineer of the Pollution Control Board (R2); Manjoor Grama Panchayat(R3) and M/s.Jesus Crushing Metals (R4). The prayers in the above writ petition are: (1) A writ of certiorari quashing Ext.P3 order by which the first respondent Kerala State Pollution Control Board has granted consent to the 4th respondent for establishing additional capacity of 25 HP Motor in his existing crushing unit with a capacity of 50 HP. The further prayers are to direct the first respondent to take appropriate

disciplinary action against the 2nd respondent and other officials of the State Pollution Control Board in accepting Ext.P2 application and recommending the same for issuance of consent to establish.

2. Ext.P1 is copy of the consent to operate the unit issued by the first respondent to the 4th respondent on 20.11.1997 on the basis of which the 4th respondent was running a stone crusher from 20.11.1997 in his property having an extent of 50 cents in Manjoor Village in Vaikom Taluk. Ext.P2 is a copy of the 4th respondent's application for increasing the capacity of the unit to 75 HP. The petitioner submits that Ext.P3 consent was issued on the basis of false information submitted by the 4th respondent. According to the petitioner, there are about 75 residential buildings within 250 meters from the site and the public roads nearby. The petitioner relies on Ext.P4 site plan in this regard. Ext.P4 shows the existence of residential

building and contains a list of residents in the area. The petitioner refers to Circular No.PCB/T1/17/80 dated 30.04.98 issued by the first respondent and submits that as per that circular, there should be a clear distance of 250 meters from the site of the proposed crushing unit to the periphery of the structure of any residence/public building or place of worship. Under that circular, it is also necessary that to locate crusher of 75 Hp capacity the applicant should own site to an extent of 1 acre. Ext.P5 is the copy of the above circular. It is in violation of Ext.P5 that Ext.P3 was issued in favour of the 4th respondent. Issuance of Ext.P3 was on extraneous considerations, it is alleged. The crushing activities which are being conducted by the 4th respondent are causing serious health hazards to the neighbouring public. The petitioner complains that no steps have been taken by the 2nd respondent for preventing air pollution which is likely to be caused by the

crusher of the 4th respondent. Ext.P6 is copy of a mass petition submitted before the first respondent by local residents. No action has so far been taken on Ext.P6. According to the petitioner, the lives of the local people will be in danger if the first respondent issues consent to the 4th respondent for operating the crusher unit on the basis of Ext.P3 and it is on the above premise that the writ petition has been filed seeking reliefs already indicated.

3. W.P.(C)No.34413/06 is filed by Sri.Chacko Thommi, who is the proprietor of M/s.Jesus Crushing Metal, (R4) in W.P.(C) No.31534/06. To begin with the respondents are Manjoor Panchayat and its Secretary alone. But later, one M.T.Thomas representing Memuri Paristhithi Samrakshna Samithy and the Senior Environmental Engineer of the Pollution Control Board were impleaded as additional respondents 3 and 4. Ext.P1 is the No Objection Certificate dated 22.4.1988 issued by the Pollution Control

Board to the petitioner for the production of 750 tonnes per month of metal in his existing crushing unit in Manjoor Village. Based on Ext.P1, the first respondent granted Ext.P2 licence to the petitioner for conducting metal crusher unit with 25 HP motor. At the time when Exts.P1 and P2 were issued in favour of the petitioner, certain persons who were having animosity towards the petitioner filed O.P.No.15051/92 before this court challenging Exts.P1 and P2. In that original petition, the petitioner entered appearance and filed counter. Thereupon, this court passed Ext.P3 interim order permitting the petitioner to start the unit complying with the conditions imposed by the Pollution Control Board. Thereafter, when the case was posted for final hearing, the original petition was dismissed for default since the petitioners in the original petition did not pursue the same. Ext.P4 is the copy of the judgment in that original petition.

4. The petitioner claims that he has operated the unit strictly in accordance with the conditions imposed by the Pollution Control Board from the date of initial grant of NOC. There has been no complaints from any quarter and the NOC and the panchayat licence were being renewed from time to time. The petitioner submits that the 25 HP motor installed is as a secondary machine. Therefore, the petitioner had applied for 50 HP primary machine with a crushing capacity attached to the 25 HP unit. The Pollution Control Board after a detailed enquiry granted Ext.P5 NOC giving consent for establishing a primary crusher unit of 50 HP in addition to the secondary unit of 25 HP without enhancing the capacity of 750 tonnes per month in the same location. The panchayat also granted Ext.P6 licence to the petitioner for installing 65 HP unit (50 + 5 + 5 + 5) in addition to the unit for which the licence had already been given. Ext.P6 licence for the 65 Hp primary unit has been subsequently

renewed by the panchayat till 31.3.2007 and Ext.P7 is the copy of the renewed licence. Ext.P8 is the recommendation of the District Industries Centre, Kottayam for additional power allocation of 60 HP to the petitioner's unit. Based on Ext.P8, the Kerala State Electricity Board granted total power of 100 HP. Ext.P9 is the copy of the order of the Electricity Board. After complying with all the formalities, the petitioner applied for a loan to the tune of Rs.50 lakhs from the State Bank of Travancore. Ext.P10 is the copy of the order issued by the State Bank of Travancore sanctioning a loan of Rs.48 lakhs. The petitioner claims that after availing the facility, he installed the unit and complied with all the conditions imposed by the Pollution Control Board in their consent for containing pollution. It is at that juncture that the very same persons who had previously filed O.P.No.15051/92 formed an association and approached this court filing W.P.(C)No.31534/06.

These persons have been exerting political influence on the panchayat and have succeeded in issuing a stop memo by the panchayat to the petitioner against installation of the additional capacity. Ext.P11 dated 18.12.2006 is copy of the stop memo. Impugning Ext.P11 on various grounds the petitioner prays that Ext.P11 be quashed.

5. A detailed counter affidavit has been filed by the 4th respondent in W.P.(C)No.31534/06. It is alleged that the petitioner organisation is a bogus organisation and such an organisation does not actually exist in Memuri or in the neighbouring areas. The persons behind this organisation and the writ petition are the very same persons who had unsuccessfully filed O.P.No.15051/92 before this court. The signatories to Ext.P6 are the petitioners in O.P.No.15051/92. Ext.R4(a) is copy of the interim order by which this court repelled the contentions raised by the petitioners in that

original petition and permitted the 4th respondent to conduct his metal crusher unit. The appeal preferred against Ext.R4(a) to the Division Bench was also turned down. The same parties are now racking up the same issue after 14 years without disclosing anything about the earlier original petition. At the instance of the very same parties, the suit O.S.No.201/92 was filed before the Sub Court, Kottayam. The suit was also dismissed. As Ext.R4(b), copy of the NOC dated 22.4.1988 issued by the Pollution Control Board to the 4th respondent is produced. Ext.R4(c) is the panchayat licence for operating the metal crushing unit with 25 HP motor. Ext.R4(d) is the consent renewal letter. Though periodical inspections were being conducted by the Pollution Control Board functionaries and the panchayat functionaries, there has been no room for any complaint so far, since the 4th respondent had been strictly adhering to the conditions imposed and the Pollution Control measures suggested by

the Pollution Control Board. Since 25 HP motor is used as a secondary machine, the 4th respondent applied for consent for functioning 50 HP Motor as primary crusher unit attached to the 25 HP machine. On further inspection, the Pollution Control Board granted consent for establishing a primary crusher unit of 50 HP in addition to the existing secondary machine without enhancing the production capacity of 750 tonnes per month. Ext.P3 is not a consent for establishing a new unit. The consent is granted only for adding another crusher without enhancing the production capacity. Pursuant to Ext.P3, panchayat also granted licence Ext.R4(c) for conducting 65 HP metal crusher unit in addition to the one for which the licence had already been granted. The contention based on Ext.P5 circular is not tenable since the petitioner is not applying for any fresh consent. What has been granted is consent for enhancing the capacity of the existing unit without enhancing the production

capacity. Denying the contention that the 4th respondent does not own 1 hectare of land, it is contended that the 4th respondent is owner of 2.70 acres in various survey numbers contiguous to the plot where the metal crushing unit is situate. Ext.R4(f) issued by the Village Officer, Manjoor is relied on in this regard. So, the 4th respondent satisfies the condition of ownership of an extent of 1 hectare of land and the condition regarding the ownership of land more than 1 hectare is not applicable since no fresh unit is being started. The petitioner in W.P.(C) No.34413/06 has obtained an interim order in that writ petition. Therefore, at the behest of the petitioners, the panchayat has issued an order withdrawing the licence granted for the 65 HP motor. The licence withdrawal was made without even issuing prior notice to the petitioner. The 4th respondent refers to the interim order in W.P. (C)No.34413/06 by which the 4th respondent has been directed to operate the machinery only after

getting further orders from this court. Ext.R4 (g) is copy of that interim order. Ext.R4(h) produced is copy of the recommendation of the District Industries Centre, Kottayam for additional power allecation of 50 HP to the 4th respondent's unit. Based on Ext.R4(h) the Electricity Board had issued Ext.R4(i) power allocation order. Ext.R4(j) is the loan sanctioning order issued by the State Bank Travancore sanctioning Rs.48 lakhs to the 4th respondent. The 4th respondent is bound to repay the loan at the rate of Rs.1.25 lakhs every month. The present writ petition filed as Public Interest Litigation is only an attempt to wreak vengeance on the 4th respondent, after the very same persons had failed in all their previous attempts to stop the 4th respondent from continuing with the unit. 10 families depend upon the working of the unit and with the expansion of the unit, there are chances of more persons getting employment.

6. The panchayat has filed a counter affidavit in W.P.(C)NO.34413/06. It is contended therein that Ext.P6 licence for installing additiona 65 HP metal crusher unit was issued by the panchayt and renewed the licence as per Ext.P7 on the basis of Ext.P4 NOC issued by the Pollution Control Board. But the machineries were not actually installed by the petitioner. In the meanwhile, the residents of Ward Nos.14 and 15 of the panchayat submitted Ext.R1(a) representation against sanctioning of the said additional 65 HP metal crusher unit. It is alleged in Ext.R1(a) that Ext.P4 NOC was issued by the petitioner by falsely representing before the Pollution Control Board that there are no house within 250 metres from the metal crushing unit. Along with Ext.R1(a), the site plan of the unit prepared by the residents was also submitted. After discussing the matter in detail in the meeting of the committee held on 7.12.2006, it was resolved by the committee to

withdraw the licence granted as per Exts.P6 and P7. Ext.R1(b) is copy of the resoltuion dated 7.12.2006 adopted in this regard. The counter affidavit alleges that the site plan submitted by the petitioner before the Pollution Control Board in obtaining certificate was false. To safeguard the interest of the residents of the panchayat, it was necessary to withdraw Exts.P6 and p7 before installation of the machineries. The above decision was in the interest of the petitioner also since the petitioner has not yet installed the machinery. The additional 3rd respondent Sri.M.T.Thomas has filed a counter in W.P.(C)No.34413/06. The contentions therein are similar to the pleadings of the petitioner in W.P.(C)No.31534/06. The petitioner in W.P.(C) No.34413/06 filed I.A.No.2976/07 seeking production of additional documents Exts.P13 to P15. Ext.P13 is a copy of the circular issued by the Pollution Control Board to show that when permission is granted to an existing unit for

installation of a primary unit without enhancing the production capacity, it is not necessary to demarcate the houses situated within 250 metres of the crusher unit while application and plan is submitted for installation of the primary unit before the Pollution Control Board. Ext.P14 is the covering letter relating to the application submitted by the petitioner seeking consent to operate the primary crusher unit after the new unit was installed. Ext.P15 is copy of the Demand Draft submitted towards fees in that regard. Sri.M.T.Thomas, additional respondent has filed a counter affidavit in this I.A. It is alleged therein that the petitioner is making more production than the permitted quantity and relies on Ext.R3(a) report issued by the Electrical Section Office, Kaduthuruthy in pursuance to a request made by Sri.M.T.Thomas under the Right to Information Act. In W.P.(C) No.31534/06 statements have been filed by the Pollution Control Board and its Senior

Environmental Engineer (R1 and R2). It is contended therein that the 4th respondent's unit is holding valid consent of the Pollution Control Board since 30.3.1996. The averments made in the writ petition regarding the primary crusher is not correct. Primary crusher is installed only to produce granite solings (granite boulders of size 4" to 6") which is the feed material to the secondary crusher. In the secondary crusher, solings are crushed and screened to required sizes such as 40 mm, 20 mm and 6mm as product. As per the consent order the firm is allowed to produce such products namely 40 mm, 20 mm, 6 mm aggregate altogether up to a maximum quantity of 750 ton/month. It is emphasised that the primary crusher is used to produce only the feed material to the secondary crusher, hence not causing increase in net production. As per Ext.R2(a) circular of the Board dated 26.8.2003 all the existing crusher units are permitted to install a primary crusher without enhancing the crushing

capacity or the production capacity of the existing crusher. Therefore, the 'consent to establish' which has been granted to the petitioner to install a primary crusher is legal and are valid. It is also stated that the 50 HP primary crusher as per the consent of the Board is installed and measures to control pollution in respect of dust and sound are nearing completion as per the conditions prescribed in the consent. It is then submitted that the Board has revised the distance norms since 30.04.98 restricting minimum distance of 250 m from any residence to set up new stone crusher units. As per Ext.R2 (i), permission is allowed for installation of primary crusher without enhancing the production capacity of the existing secondary crusher. In the case of the 4th respondent's unit, there is no enhancement in the production rate. The statement concludes by contending that the consent to establish is in accordance with the provisions in the Air Act with specific

conditions to control sound and dust pollution and the unit is liable to comply with the consent conditions and to maintain pollution levels within the prescribed limits during the time of operation.

7. In W.P.(C)No.31534/06, the writ petitioner has filed a reply affidavit reiterating its contentions and refuting the stand of the petitioner and the Pollution Control Board. It is alleged that the 4th respondent has in fact purchased a crusher unit of 75 Hp and Photostat copy of the proforma invoice issued by Sayaji Iron & Engineering Co. dated 5.11.2005 marked as Ext.P7 is relied on. It is reiterated that Ext.P7 circular squarely applies to the 4th respondent even if Ext.R2(i) circular is valid. There is nothing in Ext.P1 to show that a primary crusher is installed inside a room of minimum 0.23 m (9”) thick wall and roof of height 3.0 m. The 4th respondent has not established the primary crusher prior to 30.4.88 and is not entitled to

any concession from the Pollution Control Board. It is then contended that Annexure R2(i) is illegal and has been issued without applying mind. Two types of crushing are being carried out and dust is generated double the one fixed for the secondary crusher is ignored. The carrying of the output of the primary crusher to the secondary crusher also generate dust. The loading and unloading also generate dust. The vibrators also generate dust. These dust affect the climate of the surrounding area, the health of the humans, vegetations etc. These activities adversely affect the health of the people. Therefore, the present circular is violative of Art.21 of the Constitution of India since it will adversely affect the health of the people. It is alleged that the first respondent Board, unlike in Maharashtra and Andhra Pradesh Pollution Control Boards, has no concern for the life of the people. Those Boards have fixed minimum distances for crushing units from the human

habitation at 800 to 1000 mts. Considering the density of population of Kerala, the distance in Kerala should have been more.

8. In W.P.(C)No.34413/06 on 28.2.2007, I directed the Senior Environmental Engineer of the first respondent Board to file an affidavit clarifying whether it is necessary for the petitioner to follow the parameters in Ext.P5 since his production capacity remains the same and the crushing capacity alone is being enhanced in the light of Ext.R2(i) circular produced in W.P.(C)No.31534/06. The 2nd respondent Environmental Engineer of the Pollution Control Board filed an affidavit in W.P.(C)No.31534/06, It is stated therein that Ext.P5 order is a revised norm of the Board dated 30.4.1988 imposing restriction/guidelines for the new crushers to be set up since 30.4.1988. M/s.Jesus Crushing Metals has been established prior to that date with a secondary crusher of capacity 25 HP to produce crushed granite of sizes 20 MM, 12

MM, 6 Mm. The primary crusher does not in any way contribute to the production capacity of the secondary crusher. Primary crusher is used only to produce feed materials mechanically. Granite blocks will have to be made into small sizes using hammer. Subsequently, the Board has issued Ext.R2(i) circular on 20.08.2003 allowing the establishment of a primary crusher attached to all existing secondary crushers prior to 30.4.1988 without enhancing the production of the existing secondary crusher. In short, the contention is that the matter will not come within the stipulation of Ext.P5 and therefore, the norms in Ext.P5 are not violated.

9. When attention of Sri.P.B.Sahasranaman, learned counsel for the writ petitioner in W.P. (C)No.31534/06 was drawn to the consistent stand taken by the Pollution Control Board through its statement and the affidavit of the Environmental Engineer, Sri.Sahasranaman submitted that the Environmental Engineer is not the competent

person to take such a stand which according to the learned counsel is in conflict with the avowed intention of the Pollution Control Board discerned from Ext.P5. In view of the above submission, I directed the Secretary of the Pollution Control Board to file an affidavit clarifying whether the stand taken by the District Environmental Engineer is endorsed by the P.C.B. Pursuant to this, the Member Secretary of the Pollution Control Board filed an affidavit endorsing the stand taken by the second respondent. The Secretary has stated that he personally inspected the industry of the 4th respondent on 23.3.2007 after serving notice on the petitioner and the 2nd respondent. Ext.R1(b) is copy of that notice. The Secretary was accompanied by the District Environmental Engineer and the inspection took place in the present of everybody including the complainants. During the inspection, it was noticed that the primary crusher as well as the secondary crusher

had been installed and the instalment of primary and secondary crusher satisfies the Board's norms for establishment of crusher except in the matter of tarring or concreting of road in the vicinity of the crusher. The Secretary has examined the aspects about which the local people had complained and has indicated certain additional measures to be taken for reducing sound generation and transmission. Similarly certain additional measures are also suggested for abating dust during the operation of the existing secondary crusher. It is stated that loading and unloading and transportation shall be confined to the working time 6 A.M. to 6 P.M.

10. I have heard the submissions of Sri.V.G.Arun, counsel for the petitioner in W.P.(C)No.34413/06, Sri.P.B.Sahasranaman, counsel for the petitioner in W.P.(C)No.31534/06 and also those of Sri.Mathew Zachariah, counsel for the panchayat Sri.K.Ramakumar counsel for the additional 3rd respondent in W.P.(C)No.34413/06

and Sri.M.K.Chandra Mohandas, standing counsel for the Pollution Control Board.

11. My attention was drawn by the learne counsel to the pleadings raised by the respective parties and the various documents. Shri.Sahasranaman would place strong reliance on the judgment of the Supreme Court in **M.C.Mehta v. Union of India and others {AIR 2004 SC 4016}** and would submit that the precautionary principle and the principle of sustainable development are principles which are integral parts of Indian Environmental Law. Shri.K.Ramakumar and Sri.Mathew Zacharia would highlight that the petitioners in W.P.(C)No.34413/06 are not entitled to seek any relief from this court under Article 226 since the statutory appellate remedies has not been exhausted by them. Sri.Sahasranaman who placed before me materials down loaded from the Internet relating to environment management scenario in stone crusher industry. He would submit on the basis of such

materials that factors affecting emissions that are common to most operations include moisture content of the rock, type of rock processed, type of equipment, and operating practices employed. These factors apply to both primary and secondary sources of dust in quarry and plant operations. He submitted that some percentage of fugitive dust emissions may get settled down within the unit's premises itself, but a substantial percentage of airborne emissions are carried away to the surroundings by wind currents. dust settled within the plant gets airborne again due to vehicular movement or by wind and acts as a secondary emission source. Dust settled over the equipment may cause rapid wear and tear of the rotating parts and may lead to frequent breakdowns and higher maintenance costs. Relying on the same material, learned counsel also submitted that the suspended particulate matter in the ambient air at the crusher sites range from 2340 to 24000 ug/m3, which is substantially

higher than the desirable limits.

12. I have considered the rival submissions in the light of the rival pleadings and the materials placed on record by the parties. The submissions of Mr.K.Ramkumar and Mr.Mathew Scaria that the statutory appellate Tribunal being a Court of facts may be better equipped to resolve the factual disputes raised in this case are not without appeal. But the following aspects emerging from the materials on record and submissions addressed cannot be lost sight of.

13. OP No.15051 of 1992 challenging the grant of consent for the petitioner in WP(C) No.34413 of 2006 for the establishment of a metal crusher unit for production of 750 tonnes per month on the very same location was filed by four persons including Sri.M.T. Thomas who is the signatory to WP(C) No.31534 of 2006 and who got himself impleaded as additional respondent No.3 in WP(C) No.34413 of 2006. Mr. Arun's submission

that the very same persons who filed OP No.15051 of 1992 constituted themselves as the Samithy which is petitioner in WP(C) No.31534 of 2006 was not seriously disputed before me. Ext.R4(a) in WP(C) No.31534 of 2006 is the interim order dt.6.4.93 issued by this Court in OP No.15051 of 1992. Ext.R4(a) order was passed after hearing all parties and under that order this Court permitted the petitioner in WP(C) 34413 of 2006 who will hereinafter referred to as Sri.Chacko Thommy to conduct the metal crusher unit provided he satisfies the conditions stipulated by the Pollution Control Board under their consent dt. 22.04.1988 which is produced as Ext.R4(b). Ext.R4(a) order directs Sri.Chacko Thommy to comply with all the conditions mentioned in Ext.R4(b) and that before the factory starts functioning, a further certificate shall be obtained from the Pollution Control Board to the effect that there has been compliance with all the conditions stipulated in Ext.R4(b). Ext.R4

(a) was confirmed by the Division Bench also. OP No.15051 of 1992 in which Ext.R4(a) order was passed was dismissed by this Court for default on 25.6.98. Ext.P4 produced in WP(C) No.34413 of 2006 is the judgment which shows that all necessary parties including the Panchayat, the Deputy Director of Panchayats, the District Medical Officer, the Director of Health Services; Chairman Pollution Control Board; District Collector and the Government are parties to the same. Obviously, till about the time of filing of WP(C) No.31534 of 2006, Sri.Chacko Thommy's secondary crusher unit was being operated by him without complaints from any quarter. Ext.P3 produced in WP(C) 31534 of 2006 is the consent dt.24.8.05 issued to Sri.Chacko Thommy by the Pollution Control Board by which he is permitted to install a primary crusher of 50 HP. The Panchayat also had granted licences to Sri.Chacko Thommy for installing 65 HP unit in addition to that of 25 HP unit for which licence had already

been granted. Ext.P6 dt.13.9.05 produced in WP (C) No.34413 of 2006 is the said licence and Ext.P7 dt.23.5.06 is the renewed licence for the working of both the primary crusher of 65 HP and secondary crusher of 25 HP. The Panchayat under the decision which is produced as Ext.R1(b) in WP (C) No.34413 of 2006 decided to withdraw the licences granted as per Exts.P6 and P7 for installation of additional 65 HP metal crusher unit. Ext.R1(b) does not state any reason justifying the withdrawal. But the Panchayat says in the counter affidavit that it was on considering Ext.R1(a) representation submitted by the residents of ward Nos.14 and 15 of the Panchayat that such a decision was taken on the basis of a detailed discussion held in the meeting. The affidavit will show that the allegation in Ext.R1(a) that the petitioner obtained No Objection Certificate from the Pollution Control Board on the basis of a false representation that there are no houses within

250 meters from the metal crusher unit was a false one found favour with the Panchayat.

14. The crux question in the light of the Panchayat's decision and its stand before this Court is whether Circular No.PCB-T1/17/80 dt.30.4.98 of the Pollution Control Board which provides under Clause 1.1.3 that there should be a clear distance of 250 m from the centre of the proposed crusher unit to the periphery of the structure of any residence, public building or place of worship and there is no exemption for own buildings as one of the criteria for site suitability is applicable to the consent which was applied for by Sri.Chacko Thommy for installation of primary crusher in addition to his existing secondary crusher. The stand taken by the Pollution Control Board in this case does not admit of any ambiguity at all. According to them, Ext.P5 Circular applies only in the case of establishment of new crushers or when there is expansion of production capacity of existing

crushers. Circular No.PCB-T4/17/18 dt.26.8.03 issued clarification on this point at Clause No.4 as follows:

"Permission shall be given to stone crushers for installation of primary crusher without enhancing the production capacity. The primary crusher shall be installed inside a room of minimum 0.23 m (9 inches) thick wall and roof of height 3.0 m."

15. The Senior Environmental Engineer of Pollution Control Board as well as the Secretary himself of the Pollution Control Board filed affidavits before this Court reiterating that there is no expansion in Sri.Chacko Thommy's unit of the production capacity and that Circular No.PCB-T1/17/80 dt.30.4.98 does not apply in the case of that crusher unit. In fact the affidavit submitted by the Secretary of the Pollution Control Board shows that a further inspection was conducted by him prior to his filing the affidavit and that he became satisfied that the

conditions stipulated in the order of consent except tarring of the road within the premises has been carried out. The submission of Mr.Arun that the petitioner has taken huge loans for the installation of the primary units and that the loss caused on account of the delay which is being occasioned in the matter of operating the primary unit is substantial, was not disputed. In fact a Division Bench of this Court in WA NO.868 of 2006 following the observations in earlier Division Bench judgment in WA No.880 of 2006 has stated that even the prescription of the 250 meters rules under Ext.P5 Circular dt.30.4.98 is not an absolute one to be followed in every case since there can be instances where because of installing sophisticated machinery the amount of pollution can be minimised. In the instant case the statutory authority with expertise on pollution and related matters have taken the stand before this Court that Ext.P5 Circular does not apply to Sri.Chacko Thommy's unit at all and

that conditions imposed under the consent are sufficient to contain all possibilities of pollution. Submissions of Mr.Sahasranaman notwithstanding, I am not persuaded on the available materials to hold that the control measures insisted upon by the Pollution Control Board are not sufficient to contain the pollution will be generated by the operation of the units by the petitioner. Perhaps the petitioner in WP (C) No.31534 of 2006 may be able to substantiate their contentions by adducing evidence before the Tribunal.

Under these circumstances, even as I dispose of both the writ petitions relegating Sri.Chacko Thommy to seek his remedies against the impugned decision of the Panchayat before the Tribunal, I direct that the said decision shall be kept in abeyance for a period of six months from today. The additional 4th respondent in WP(C) No.34413 of 2006, Senior Environmental Engineer, Pollution Control Board will conduct an immediate further

inspection of the unit in question and ensure that Sri.Chacko Thommy has satisfactorily complied with all the conditions stipulated in the consent order including tarring of the road. Once it is so ensured, a certificate to that effect shall be given to the petitioner under intimation to the Panchayat. Upon obtaining such a certificate the licence issued to Sri.Chacko Thommy will become operative and Sri.Chacko Thommy will have the permission to operate the primary as well as the secondary crushers already installed by him subject to the outcome of the appeal to be preferred by him before the Tribunal. Appeal if any shall be preferred by him within one month of his receiving the certificate from the Pollution Control Board as directed above. In the appeal the petitioner in WP(C) No.31534 of 2006 shall also be made a party and the Tribunal will permit all the parties to the appeal to adduce whatever evidence they want to, and will not be unduly influenced by the

permission granted by this judgment to Sri.Chacko Thommy to operate the unit subject to the result of the appeal and also by the observations in this judgment, touching the merits of the contentions and claims.

Both the Writ Petitions are disposed of as above. No costs.

(PIUS C. KURIAKOSE)
JUDGE

sk/btt